

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DANIEL DEAN BALLARD,

Plaintiff

Case No. 3:21-cv-00460-RCJ-WGC

ORDER

v.

STATE OF NEVADA et al.,

Defendants

I. DISCUSSION

Plaintiff, who is incarcerated in the custody of the Nevada Department of Corrections (“NDOC”), has submitted both a civil rights complaint pursuant to 42 U.S.C. § 1983 and a petition for writ of habeas corpus in this action. (ECF Nos. 4-1, 6). Plaintiff cannot pursue both types of claims in the same case. *See Nettles v. Grounds*, 830 F.3d 922, 927 (9th Cir. 2016) (reiterating that “habeas is the exclusive vehicle for claims brought by state prisoners that fall within the core of habeas, and such claims may not be brought in a § 1983 action”); *Wilkinson v. Dotson*, 544 U.S. 74, 81–82 (2005) (holding that “a state prisoner’s § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner’s suit (state conduct leading to conviction or internal prison proceedings)—if success in that action would necessarily demonstrate the invalidity of confinement or its duration”). Plaintiff may pursue either his § 1983 complaint or his habeas petition in this case but not both. He may file the other action in a separate case.

By Tuesday, December 28, 2021, Plaintiff will file a notice with the Court indicating whether he: (1) wishes to pursue his § 1983 civil rights complaint (ECF No. 4-1) and strike his habeas related filings (ECF Nos. 6, 7, 8, 9, 10, 11) in this case; or (2) strike his § 1983 civil rights complaint (ECF No. 4-1) and pursue his habeas related filings in this case. If Plaintiff does not designate one of these options, the Court will dismiss the entire case without prejudice because Plaintiff cannot proceed simultaneously on both his § 1983

1 complaint and habeas petition in the same case.

2 Additionally, Plaintiff must file a fully complete application to proceed *in forma*
3 *pauperis* on this Court's approved form and submit the required attachments by Tuesday
4 December 28, 2021 or face possible dismissal of this action. (See ECF No. 3). Although
5 Plaintiff filed the first three pages of his application to proceed *in forma pauperis* on this
6 Court's approved form, he has not filed a financial certificate on this Court's approved
7 form—page 4 of the application—and has not submitted an inmate account statement for
8 the past six months. (See ECF Nos. 4, 5). As such, Plaintiff has yet to file a fully complete
9 application to proceed *in forma pauperis*.

10 **II. CONCLUSION**

11 It is therefore ordered that, by Tuesday, December 28, 2021, Plaintiff will file both
12 a financial certificate on this Court's approved form and an inmate account statement for
13 the past six months.

14 It is further ordered that, if Plaintiff fails to file a fully complete application to proceed
15 *in forma pauperis* by the deadline, the Court will recommend dismissing this case without
16 prejudice.

17 It is further ordered that, by Tuesday, December 28, 2021, Plaintiff will file a notice
18 with the Court indicating whether he: (1) wishes to pursue his § 1983 civil rights complaint
19 (ECF No. 4-1) and strike his habeas related filings (ECF Nos. 6, 7, 8, 9, 10, 11) in this
20 case; or (2) strike his § 1983 civil rights complaint (ECF No. 4-1) and pursue his habeas
21 related filings in this case.

22 It is further ordered that, if Plaintiff fails to inform the Court whether he is pursuing
23 his § 1983 civil rights complaint or habeas petition in this case, the Court will dismiss the
24 entire case without prejudice because Plaintiff cannot pursue both actions simultaneously
25 in the same case.

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1 It is further ordered that the Clerk of the Court will send Plaintiff courtesy copies of
2 (1) its previous order (ECF No. 3); (2) this Court's approved application to proceed *in*
3 *forma pauperis* for prisoners; and (3) the docket sheet.

4 DATED: December 8, 2021.

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6 UNITED STATES MAGISTRATE JUDGE